



Volume 57 | Issue 5

Article 9

2012

In Support of Moral Absolutes

Candace Vogler

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/vlr>



Part of the [Legal History Commons](#)

Recommended Citation

Candace Vogler, *In Support of Moral Absolutes*, 57 Vill. L. Rev. 893 (2012).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol57/iss5/9>

This Symposia is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

2012]

IN SUPPORT OF MORAL ABSOLUTES

CANDACE VOGLER

IN September of 1988, John Finnis gave the four Michael J. McGivney Lectures at the Pontifical John Paul II Institute for Studies on Marriage and the Family in Washington, D.C. The lectures—*Moral Absolutes: Tradition, Revision, and Truth*—were published a few years later.¹ The lectures are very ambitious. I intend my remarks today as a friendly analytic philosopher's contribution on this theme.

Finnis's work in ethics is magisterial and wide-ranging. My concern is very narrow. Finnis argues that religion is one among several goods important to the fulfillment of whole human persons.² The bulk of Finnis's work in practical philosophy, generally, and ethics in particular, rests on thought about human good and practical reasonableness. Theology informs the project, but does not serve as a foundation for the practical philosophy. I will urge that we need theology for some of it.

Now, a clever philosopher can make a lot of headway in neo-Aristotelian practical philosophy *without* relying upon sacred doctrine. Part of the reason that Elizabeth Anscombe urged philosophers who had been involved in lengthy disputation over the character of moral law to stop hunting for the special *moral ought* and return to Aristotle in 1958 was that *nothing* in Aristotle's practical philosophy rests in thought about an almighty god who is at once creator and a legislator.³ Things are less clear when neo-Aristotelian practical philosophy draws from Aquinas.

Finnis does not rely upon Thomistic or Aristotelian thought about the final end of human life to make his case. He holds both that good is to be pursued, and evil avoided, and that *bonum est multiplex*. All things pursued by mature human beings with their wits about them are, as my colleagues put it these days, pursued under the guise of the good,⁴ but, Finnis adds

1. See JOHN FINNIS, *MORAL ABSOLUTES: TRADITION, REVISION, AND TRUTH* (1991).

2. As the topic emerges in an essay co-written with Germain Grisez and Joseph Boyle, religion is one of the forms of harmony and peace at issue in reflexive goods: "peace with God, or the gods, or some nontheistic but more-than-human source of meaning and value." Germain Grisez, Joseph M. Boyle & John Finnis, *Practical Principles, Moral Truth, and Ultimate Ends*, 32 AM. J. JURIS. 99, 108 (1987).

3. See G. E. M. Anscombe, *Modern Moral Philosophy* (1958), in *ETHICS, RELIGION AND POLITICS: THE COLLECTED PHILOSOPHICAL PAPERS OF G. E. M. ANSCOMBE* 26-42 (Univ. of Minn. Press 1981); *more recently reprinted in* *HUMAN LIFE, ACTION, AND ETHICS: ESSAYS BY G.E.M. ANSCOMBE*, 169-94 (Mary Geach & Luke Gormally eds., Imprint Academic 2005).

4. For an excellent discussion of the recent philosophical wrangle over whether what humans pursue is pursued *sub specie boni*, see Doug Lavin & Matthew Boyle, *Goodness and Desire*, in *DESIRE, PRACTICAL REASON, AND THE GOOD* 161-201 (Sergio Tennenbaum ed., Oxford Univ. Press, 2010).

(in a way not entirely unlike the way in which Anscombe makes a similar addition) the plurality and incommensurability of human good is such that not everything done within reason is done toward a single grand end. Finnis does, however, adopt a Thomistic structural emphasis on law in ethics—practical reasonableness guides choice—that is, does its principled—or precept—or norm—or natural-law-governed—work from an agent’s apprehension of overall human good. Reasonable pursuit of human flourishing constitutes an agent’s participation in overall human good. And the kind of law at issue in Finnis’s practical philosophy is, of course, natural law.

Just as you might turn to Aristotle on justice to regain your philosophical footing having become convinced that attempting to isolate the special *moral* law in the absence of divine law had put you in a muddle, so too you do not have to lean on God in order to make some headway developing work about natural law for an audience that cannot be presumed to share a commitment to a confessional tradition. Natural law is supposed to be promulgated through natural reason, and should find secure enough footing there to illuminate many issues in practical philosophy. But the very philosophical work that teaches us to rely upon the sort of thing that Finnis treats under the heading of “reasonableness” also teaches us that natural law is rooted in divine law. And this point ought to give us pause. It ought to make us suspect that there are some questions in neo-Aristotelian practical philosophy informed by Thomism that cannot be answered apart from reliance on the theological framework that directed our attention to natural law in the first place.

With this in mind, my narrow question is this: can one ground absolute moral prohibitions without theology?⁵

Immanuel Kant, whose god is a postulate of practical reason rather than a creator and legislator, thought that we could understand the force of absolute prohibition without theological guidance, and Kant’s approach to this question is strikingly similar to Finnis’s at one point (but diverges at another). More recently, two Anglophone philosophers whose work is especially congenial to Finnis’s project—Anscombe and Peter Geach—have implied or claimed outright that we need to understand natural law in its relation to divine law in order to understand the philosophical foundations of exceptionless moral norms.

5. Aristotle, working before the advent of the relevant theological traditions, apparently thought that philosophy could not help us with a related question, namely, whether just interaction was possible between two human beings who had nothing in common. Finnis raises the question of whether Aristotle has an account of absolute prohibitions in JOHN FINNIS, *Moral Absolutes in Aristotle and Aquinas*, in 1 REASON IN ACTION: COLLECTED ESSAYS, 187-98 (2011). He does not focus the discussion on the question of the scope of justice in Aristotle, which is where contemporary Anglophone ethicists working to respond to Anscombe’s call locate the hard questions.

My approach to this question in Finnis will be artificial. I will take apart what amounts to Finnis's single response to a serious objection, separating it into three distinct strands, or lines, of argument. I will set aside the first of these as not making the right sort of contact with a strongest form of the objection, which I take from Peter Geach. I will offer a Kantian construe of the second that requires no theology. Finally, I will turn to the third. The third strand carries what is off to the side in the first two—namely, an invocation of sacred doctrine and, through it, implicitly, of divine law. My treatment of the third strand will be brief, but the third strand succeeds in providing rational grounding for exceptionless moral norms—those norms at issue in absolute moral prohibitions.

I. EXCEPTIONLESS MORAL NORMS

Moral Absolutes is about what Finnis calls “exceptionless moral norms.”⁶ Michael Thompson has provided excellent arguments for the claim that, in one sense, *all* moral norms are exceptionless. Here is the sense in which this is the case: no sound articulation of the content of a moral norm writes the exceptions into the rule.⁷ On this understanding,

6. Finnis uses *norm*, rather than *precept* or *principle*, terms he treats as roughly synonymous with *norm* in some other writings. The term covers a very wide range of different kinds of patterned activity and conduct in different kinds of human communities. What they all have in common is that: (A) there is such a thing as failing to meet the norm-governed expectations of adept participants; and, (B) one is held accountable for the failure in meeting such expectations. If I understand him, Finnis uses *norm* for three reasons:

1. *Norm* is a term in common use across various disciplines to denote socially sanctioned sameness in a specific area of human activity.
2. Most mature participants in a norm-governed area of human activity do *not* explicitly formulate the standards at issue in the relevant norms, and many may actually be surprised to learn that their activity is patterned or ordered in the relevant sense. Undergraduates in an elementary logic course, for example, may be surprised to notice that in understanding why it is bad to be on the receiving end of a sentence of the form ‘If you loved me, then you’d do such-and-such,’ they display their understanding of *modus (tollendo) tollens*.
3. The combination of (1) and (2) makes it the case that *norm* captures something of the sense of *principle* in scholastic medieval philosophy—at once an articulation of the content of a standard and a source of the order so-described, produced, and regulated.

7. Michael Thompson's first argument to this effect concerns the logic of judgments about the nature of species of living things. See Michael Thompson, *The Representation of Life*, in *VIRTUES AND REASONS: PHILIPPA FOOT AND MORAL THEORY* 280-96 (Rosalind Hursthouse, Gavin Lawrence, & Warren Quinn, eds., Clarendon Press 1995). The point is that judgments about species of living things are irreducible, are not to be assimilated to statistical or *ceteris-paribus*-framed generalizations, behave in the same way as Fregean universal judgments, and, as such, resist any attempt to “write in” the content of exceptions to the natural historical “rules” they express. The similarity between these judgments and the kind at issue in ethical judgment is taken up and worked through in different ways in Thompson's larger project. He makes a similar case about judgments expressible in sentences like “*Pacta sunt servanda*”—promises are to be kept. See MICHAEL THOMPSON, *Other Practices, Other Dispositions: An Indirect Articulation of the Specifically Practical-Philosoph-*

every sound articulation of the content of a moral norm represents that content shorn of any exceptions. You do not need any theology to get this. All you need is alert, creative, and serious work in old-fashioned analytic Anglophone predicate logic and philosophy of language. Combine that with any non-theistic account of the foundations of ethics and you have thereby given an account of moral norms such that the content of those norms is *necessarily* exceptionless.

This is not what Finnis is after. Finnis means to focus our attention on some among many moral norms that have special force. And in drawing our attention to these, what Finnis is after is very ambitious. It goes well beyond the tiny set of absolute moral prohibitions that many (although by no means all) contemporary Anglophone ethicists are willing to admit—prohibitions on such acts as deliberately securing the judicial condemnation of a man you know to be innocent—to acts of contraceptive sexual intercourse, onanism, or sodomy.

Anscombe argued against contraceptive sexual intercourse without relying upon sacred doctrine.⁸ She did not think that her argument, or one like it, could be deployed against, e.g., sodomy.⁹ For the remainder of this talk, I will concentrate upon the kinds of acts that many contemporary non-theistic ethicists will suppose are never permitted—acts like murder, rape, and torture.

II. PETER GEACH'S OBJECTION

To take up the kinds of prohibitions that many anti-theistic moral philosophers will countenance, consider Geach's challenge to neo-Aristotelian ethics:

ical Conception of Practices and Dispositions, in LIFE AND ACTION: ELEMENTARY STRUCTURES OF PRACTICE AND PRACTICAL THOUGHT 183-91 (2008).

8. See G. E. M. Anscombe, *You Can Have Sex Without Children: Christianity and the New Deal*, in THE COLLECTED PHILOSOPHICAL PAPERS OF G. E. M. ANSCOMBE: ETHICS, RELIGION AND POLITICS 82-96 (1981).

9. Anscombe's argument depends upon thought about as-such-generative acts—namely, for human beings, the kind of sexual intercourse that might prompt partners to take contraceptive measures *precisely in order to* prevent procreation. This form of sexual union has special prominence in the lives of human beings because it is how we reproduce our species. One can argue, as Anscombe does, that it is not up to us to determine the end of such a kind of act, nor to deploy it as one among many means in attaining other ends. The argument can be made, as Anscombe's is, simply by way of reflection on the place of this act in human life more generally. It is another matter entirely to try to argue on behalf of prohibitions on kinds of sexual acts that have *no* special place in an overall understanding of human life and human flourishing.

The difficulties here are not trivial. The concern emerges from an audience that cannot be presumed to have any specific theological commitments beyond an interest in being in harmony with some larger-than-human source of meaning and value. Umbandistas in Sao Paolo, Buddhists in San Francisco, and male citizens in ancient Athens all might well have *that* going for them.

[Somebody] might very well admit that not only is there something bad about certain acts, but also it is desirable to become the sort of person who needs to act in the contrary way; and yet *not* admit that such acts are to be avoided in all circumstances and at any price. To be sure, a virtuous person cannot be ready in advance to do such acts; and if he does do them they will damage his virtuous habits and perhaps irreparably wreck his hard-won integrity of soul. But at this point someone may protest 'Are you the only person to be considered? Suppose the price of your precious integrity is a most fearful disaster! Haven't you got a hand to burn for your country (or mankind) and your friends?' This sort of appeal has not, I think, been adequately answered on Aristotelian lines, either by Aristotle or by Mrs. Foot.¹⁰

If I understand him, Finnis has three strands of response to this sort of challenge. The first is given at length by Finnis, Boyle, and Grisez,¹¹ with additional support in a subsequent essay by Finnis.¹² It concerns the question whether there could be a sound policy based upon standing prepared to commit intrinsically wrongful acts for the sake of preserving a great good, and/or preventing great evil. Finnis, Boyle, and Grisez argue that no such policy could be morally sound.¹³

Suppose that they are right. Is the argument enough to answer Geach's objection?

It is fairly clear from the context that Geach means to point to the kind of example ordinarily given in support of doing a bad sort of thing for the sake of securing great good or avoiding catastrophe. It is normally the case in these examples that we are invited to imagine an agent who is very nearly uniquely positioned to do the bad act in question, and are being asked to consider the particular bad act in isolation from that agent's ordinary practical tendencies.

Geach is *not* suggesting that there could be a sound policy or rule that favors taking, or threatening to take, wrongful means to exalted ends in general; neither does he suggest that virtue could favor such acts.¹⁴ Geach's objection instead is geared to highly specific circumstances, and

10. See Peter Geach, *The Moral Law and the Law of God*, in *GOD AND THE SOUL* 123 (Routledge 1978).

11. See JOHN FINNIS, JOSEPH M. BOYLE, JR. & GERMAIN GRISEZ, *NUCLEAR DETERRENCE, MORALITY, AND REALISM*, (Clarendon Press 1987).

12. See FINNIS, *supra* note 5, at 187-98.

13. They make their argument on the basis of common morality, arguing that this morality has its origins in Judeo-Christian thought and practice. If Anscombe is right, such appeals are tacit appeals to divine law, and so do not reach out beyond the community of the faithful in the right sort of way to persuade an audience of non-believers; see *MODERN MORAL PHILOSOPHY*, *supra* note 3. It is beyond the scope of this essay to investigate whether Anscombe's objection will tell against the nuclear deterrence argument.

14. In these respects, the objection is unlike objections that might be made to prohibitions of non-contraceptive sexual acts that have been condoned and sub-

could involve human agents who are very nearly uniquely positioned to commit the wrong in question.

Barring a serious argument on uncontroversial grounds that there is no important difference between general policy questions and questions concerning particular acts under specific sorts of circumstances, the first response does not make the right sort of contact with Geach's objection to provide an adequate response.¹⁵

Finnis's second line of response *does*. The second line goes like this: the only way to support the claim that some individual agent may be required to perform a wrongful act in order to avert catastrophe is with reference to an estimate of the likelihood that disaster will ensue should that individual refuse to do wrong. No such estimate of the future is sound.

III. TOUCHING HUME AND TURNING TO KANT

There are two obvious ways to construe Finnis's second line of response. The first is Humean and takes it that the argument comes to rest in the infamous problem of induction. This is not the way in which Finnis ought to be read.

The problem with invoking general skepticism about inductive inference here is that the response threatens to undermine some of the grounds used to establish other crucial points in Finnis's position.¹⁶

jected to various forms of governance in law, custom, and conscience in some human communities. The concern there is general.

15. Lately, one major Anglophone Kant scholar has given an interpretation of Kant's practical philosophy such that there is no interesting difference, for Kant, between choice of policy and choice of a specific act under specific circumstances by a specifically positioned, finite, dependent, rational agent. See STEPHEN ENGSTROM, *THE FORM OF PRACTICAL KNOWLEDGE: A STUDY OF THE CATEGORICAL IMPERATIVE* (Harvard Univ. Press 2009). The view is controversial, both in its own right and as a reading of Kant. It also is at odds with some aspects of neo-Aristotelian practical philosophy and, on some readings, some aspects of Aquinas's practical philosophy.

16. Finnis, for example, uses empirical findings in social science to support claims about the operation of natural reason and natural law in human life generally. It is extremely difficult to find *any* region of natural or social science that is entirely immune to questions about the soundness of inductive inference. Further, on the face of it, at least, it is exceedingly difficult to give a compelling account of the importance of human experience in our pursuit of knowledge generally if we embrace Humean skepticism about induction in its strongest form. And we will need a *very* strong form of Humeanism to provide support to the claim that it is, in effect, *inconceivable* that we confidently can predict disaster should our unfortunate agent refuse to do wrong. After all, entire industries that deal in risk, imperfect information, and uncertainty rely upon elaborate mathematical models for estimating the future. Although there are notorious problems applying the probability calculus to one-off events, as long as our unfortunate agent is in a *kind of position* involving *kinds of circumstances* and *kinds of opponents* and *kinds of threats*, and as long as the wrong urged upon him is a *kind of act*, we can, if necessary, enlist the aid of the actuaries, the statisticians, the criminal profile specialists, the military, or the practitioners of the relevant branches of engineering and the special sciences to give us an estimate of the scope of the threatened disaster and the

Humeanism *will* take its stand alongside Finnis in this matter, but one does not want the defense of one's argument to be in the hands of the Humean skeptic. That particular philosophical comrade-in-arms is as likely to turn his weapons upon you as he is to attack your enemy.

So suppose the worst-case scenario version of Geach's objection: suppose that as many of the relevant experts as we like can be marshaled, each armed with the vast resources of a field of serious scientific inquiry, each experienced, each mature, each having considered the terrible threat—suppose all that *and* that they all agree that the threat of disaster *is* credible, that our unfortunate agent *is* in a position to make a real difference, and that the most efficient way of doing so will involve him doing such-and-such (an act described in the kinds of non-moral terms favored among such experts; an act that will be an act of murder or torture or rape or deliberately securing the judicial condemnation of an innocent person, or some such). Return to Finnis's second line of response and try a different construe. Enlist Kant rather than Hume.

Kant's most famous example of such a case involves a murderer who comes to the door and asks whether so-and-so is in your house; so-and-so *is* in your house; and Kant argues that you are required to tell the murderer as much even though the murderer intends to murder so-and-so.¹⁷

The relevant passages have excited considerable controversy among Kant scholars and neo-Kantians. Christine Korsgaard approaches the issue by considering the relation between the prohibition on lying and various formulations of the categorical imperative, then softens the blow by urging that Kant provides an ideal moral theory based in a capacious understanding of human good, rather than a theory so pinched that Kant cannot see that many people will suppose that, far from being forbidden to lie to the murderer at the door, one might be *morally required* to lie; she argues that Kant will allow us to formulate special principles for the sake of dealing with evil.¹⁸

If I understand Kant, one ought *not* to try to soften his remarks about lying. Further, I do not think that the best way to go about supporting Kant's assumption that there *is* such a prohibition is by way of meditation on apparent differences between the categorical imperative formulae. If we look to other aspects of Kant's practical philosophy for guidance, a very different argument in support of his discussion of the murderer at the door emerges, one that looks to be potentially useful to Finnis. That line of argument begins by noticing that when we consider the causal order of natural events, we find one event, followed by another, and then another.

likelihood that the imagined wrongful intervention will avert it or in some other way help to alter the course of wretched human events.

17. See IMMANUEL KANT, *On the Supposed Right to Lie From Altruistic Motives*, in *CRITIQUE OF PRACTICAL REASON AND OTHER WRITINGS IN MORAL PHILOSOPHY* 346-50 (Lewis White Beck ed., Univ. Chicago Press 1949).

18. See Christine Korsgaard, *The Right to Lie: Kant on Dealing with Evil*, *PHIL. & PUB. AFF.*, Autumn 1986, at 325-49.

The world as it emerges in the perspective of modern science, Kant thought, has no room for thought about what is *supposed to happen*. It is built upon thought about what actually *does*, or *did*, or *will* happen. The kind of orientation to the future at issue in apprehending a series of physical events *as such* is, Kant thought, fundamentally and formally different from the orientation to the future at issue in practical reason. Practical reason seeks to bring about what is *supposed to happen*.

In effect, by making a calculation about what will happen if you lie, you throw in your lot with the merely natural order of events. To throw in your lot with the merely natural flow of events is to abandon the special way in which practical reason rightly orients itself to the future.

Michael Thompson updates and expands upon the relevant distinction between what happens and what is supposed to happen like this:

In learning of the various cellular processes unearthed and described in biochemistry—photosynthesis, for example, or the Krebs cycle, or the replication of DNA—one is inclined to think, It's all getting boiled down to physics and chemistry, isn't it?, and in some sense of "boiling down" this is of course true. But it is interesting that if the only categories we have to apply are those of chemistry and physics, there is an obvious sense in which none of these goings-on will add up to *a single process*. In a description of photosynthesis, for example, we read of one chemical process—one process-in-the-sense-of-chemistry—followed by another, and then another. Having read along a bit with mounting enthusiasm, we can ask: "And what happens next?" If we are stuck with chemical and physical categories, the only answer will be: "Well, it depends on whether an H-bomb goes off, or the temperature plummets toward absolute zero, or it all falls into a vat of sulphuric acid . . . " That a certain enzyme will appear, and split the latest chemical product into two, is just one among many possibilities. Physics and chemistry, adequately developed, can tell you what happens in any of these circumstances—in any circumstance—but it seems that they cannot attach any sense to the question "What happens next?", *sans phrase*. The biochemical treatise appears to make implicit play with a special determination of the abstract conception of a process, one distinct from any expressed in physics or chemistry proper.¹⁹

Human acts, like vital processes more generally, only come into view through an understanding of what is *supposed to happen*—of the aim or point or good at issue in the process. From the point of view of a mere chain of events—the kind of thing we find when we consider physical and

19. Michael Thompson, *The Representation of Life*, in VIRTUES AND REASONS: PHILIPPA FOOT AND MORAL THEORY 260-61 (Rosalind Hursthouse, Gavin Lawrence & Warren Quinn eds., Clarendon Press 1995)

chemical events as such—there is *no such thing* as what is *supposed* to happen. This is another way of drawing the distinction at issue for Kant in his work on the special orientation to the future that belongs to practical reason.

In this sense, it is already a mistake to treat my own act in prospect as one among indefinitely many things that might happen. The kind of process in question—intentional action—can only be brought into view through an understanding of how things are supposed to go from the perspective of the agent.

To capture the second aspect of Kant's argument, we need to add one of the core aspects of the orientation to the future at issue in intelligent action. This piece concerns an asymmetry between the way good and bad falls to the agent as a result of her action:

1. I am responsible for the bad outcomes of a bad act, but get no credit for any good accomplished through my misconduct.
2. I get credit for the good outcomes of a good act and, when I choose well and act well, I am not responsible for bad outcomes of good acts.

This asymmetry is ubiquitous in our evaluation of human action; it shapes our assessment of both particular acts and large-scale implementation of policy measures.²⁰

Kant holds that there is an absolute prohibition against lying.²¹ Because it is *always wrong* to lie, lying to the murderer at the door in order to get him to leave your guest in peace involves a serious error in the exercise of practical reason. Firstly, it depends upon a kind of calculation of consequences that can *never* be used to support a contention about what *ought* to happen, but at best treats my own act in prospect as if it were a mere physical or chemical happening. No mere physical or chemical happening can have the relation to good and bad at issue in intelligent choice. And, because of this, secondly, if I *do* lie to the murderer at the door and he leaves, I can no more take credit for this happy event than a violently abusive parent can take credit if his children decide to turn their backs on their unhappy childhoods and do everything in their power to provide safe and loving homes for their own children when they are grown. Even if the children say that they learned the value of tender parenting through long years of abuse, this does not make it the case that their parents can congratulate themselves on a job well done.

20. I argue that this aspect of practical reason is ubiquitous in Candace Vogler, *For Want of a Nail*, CHRISTIAN BIOETHICS, Aug. 2008, at 187-205.

21. Korsgaard's account of the relevant passages in Kant rests in her account of a strong Kantian derivation of the prohibition on lying. I read Kant's discussion of the categorical imperative differently, but Korsgaard does a nice job of explaining some of the grounds for Kant's understanding of the wrong of lying. See Christine Korsgaard, *supra* note 18, at 325-49. For Finnis's account of the absolute prohibitions, including the absolute prohibition on lying, in Aquinas, see John Finnis, AQUINAS: MORAL, POLITICAL, AND LEGAL THEORY 163-70 (Oxford Univ. Press 1998).

What Kant saw is that Hume's skepticism about inductive reasoning does not so much as *make contact* with practical reasoning—reasoning that aims at making things as they should be in and through intelligent choice. No amount of information about what has happened or is likely to happen can settle a question about what is supposed to happen. Assemble all the experts you like. Get them to generate as many predictions as you please from the most elaborate statistical models they can muster. Their knowledge *cannot* alter a truth about what is supposed to happen even if they can confidently predict that a murderer at the door is more likely to leave his intended victim in peace if you tell a lie than if you tell the truth. If Kant (and Aquinas) are right in thinking that there is an absolute prohibition on lying, then you *cannot* pursue good by means of a lie for, Kant will say, if some good comes of it, that good *cannot* be counted as one of your practical achievements—and for this reason, it *cannot* serve as the intended end of your act. Any evil that comes of your lie, on the other hand, will follow that lie back to your doorstep.

In this sense, Kant's construe supports Finnis's second line of response to Geach's objection.²²

IV. THE TROUBLE WITH THE KANTIAN RESPONSE

Kant's way of supporting something very like Finnis's second line of response has this to recommend it: the argument rests on an understanding of practical reason and its peculiarities alone.²³ We do not need to draw upon any substantive theological claim in order to see the force of

²² Finnis says:

Those who undertake to assess and compare the amounts of premoral but humanly relevant goods and bads promised in alternative options are bound to narrow their focus, to shrink the horizons of their assessment. (For only thus can they make the assessment and comparison even *seem* possible). And this narrowing cannot be guided by any moral principle of responsibility. For either, Pursue the greatest premoral good is their exclusive principle, or at least they maintain that moral principles generally applicable are overridden by the proportion of premoral goods and bads promised by one option compared with others in a situation of "conflict".

FINNIS, *supra* note 1, at 17-18. Finnis continues this observation in two distinct directions. The first reaches out to an audience of believers and unbelievers alike. The second relies upon sacred doctrine. Concentrate upon the first. On that side, Finnis concludes the passage I have just quoted by claiming that setting out knowingly to do a bad act for the sake of bringing about good cannot be grounded in reason but must instead be a matter of emotion, want, or desire. Kant would have put the point this way: such an act will always turn upon an error in practical reasoning. Notoriously, Kant chalks up such failures to the operations of mere desire, self-love, and the like. In this sense as well there is an affinity between Finnis's second line of response and Kant's practical philosophy.

²³ Kant treated the kind of process at issue in Thompson's remarks by suggesting that, in apprehending the teleological structure of vital processes and species of living thing, we in effect used our understanding of the nature of volition to apprehend the natural world. In this sense, he took it that the order of events in question had its proper home in an understanding of practical reason.

the argument. As I mentioned, Kant's god is a postulate of practical reason, not an almighty creator and legislator.²⁴

There are, however, severe drawbacks to this account of the force of absolute prohibitions. The first is this: the argument rests on what are, in some sense, formal requirements of practical reason. Notoriously, work on matters that are in this sense formal under-determines the substantive content of what it surveys. Kant took it, for example, that his account of practical reason and moral theory applied to any and all finite dependent rational beings. For Kant, if the account works for human beings, this cannot be because *being human* enters into the understanding of the nature of practical reason. He thought that, if he was right about the will, then his account equally well applies to any existing finite dependent rational dolphins, any finite, dependent rational Martians and, given that the Lucifer story suggests that even angels are capable of knowing the better and choosing the worse, to angels as well. There is no reason to suppose that the small set of absolute prohibitions that most contemporary Anglophone ethicists will admit could apply across the whole range of beings that might count as Kantian finite dependent loci of pure practical reason. (The same holds true for the broader set of exceptionless moral norms at issue in Finnis's work). For example, it is only possible to set out deliberately to secure the judicial condemnation of someone you know to be innocent if you are operating within a judicial system that could wrongly condemn your intended victim. Whatever else one might say about angels, *that* is not a thing they could do. There is no such thing as pulling the wool over the eyes of the Judge they face.

The second problem is related to the first, and draws upon what Thompson noticed about vital processes generally: all of them have the kind of structure that interested Kant. Understanding *any of them* requires getting a grip on what is supposed to happen, quite apart from merely chemical or physical estimation of what *does*, or *did*, or *likely will* happen. Worse, perfectly appropriate exercises of human practical reason involve altering not just how things *do* go with species of living things, but also how things are *supposed to* go. Wander through any garden containing tea roses or annual geraniums or dahlias. You will find yourself in a glorious world of cultivars. For any of them, some part of how things are supposed to go in spring is a product of human art working with plant material. Kant will have no quarrel with this, and I cannot imagine that Finnis will take issue with ardent practitioners of ornamental horticulture. For Kant, but not for Finnis, details about the natures of species of living things are irrelevant from the point of view of practical reason. But for that very reason, it is unclear how Kant could object to a genetic engineering project that set

24. For an all-around excellent discussion of the relation between the practical postulates in Kant and an understanding of the kind of good that orders the practical orientation of finite, dependent rational beings, see Stephen Engstrom, *The Concept of the Highest Good in Kant's Moral Theory*, PHIL. & PHENOMENOLOGICAL RES., Dec. 1992, at 747-80.

out to alter how things are supposed to go in the human species. Finnis will have powerful objections to any such science project.

In short, the kind of support needed in Finnis's second response to the Geach objection cannot be got from Kant. The problem runs parallel to the trouble with the Humean construe: in supporting one aspect of Finnis's position, it undermines the ground for much of the rest of it.

V. THE THIRD WAY

Finnis's third line of response to Geach's objection does, in fact, say what Geach takes to be required to address the objection adequately. Here is what Finnis says:

To deny the truth of moral absolutes by arguing that they block the reasonable and responsible pursuit of greater amounts of premoral good is incoherent with faith in divine providence.²⁵

What sacred doctrine adds to philosophy to get us past Geach's objection is precisely an understanding of divine providence, and, in the relevant tradition, understanding of divine providence opens onto an understanding of the root of natural law in divine law.

Matthew O'Brien has taken up this point and explored it in considerable detail recently in a careful defense of Anscombe's insistence that we require divine law ethics of the sort that informs Judeo-Christian thought in order to give the appropriate sense to the special *moral* ought, and thereby capture the force of absolute prohibitions. O'Brien summarizes his defense of Anscombe (and of Geach's insistence that the Christian has the resources to respond to the claim that one can act ill in order to promote good or prevent evil) this way:

If someone does not believe in God, or believes in God but does not believe that God intends—legislates—for him to strive for his own perfection, then only the former, immanent source of moral normativity remains. If someone does believe in a divine legislator, however, then choosing to cooperate with God's plan is for him practically necessary in order to achieve his own perfection, and the authority of morality's claims upon him will rest in the authority of God. Apart from this theological framework, the authority of morality may continue to be felt in the reproaches of blame, but its comprehensive binding force will not have a foundation in practical reason.²⁶

I take it that Finnis's invocation of faith in divine providence carries with it all the necessary force of understanding God as both creator and

25. FINNIS, *supra* note 1, at 20.

26. Matthew O'Brien, *Practical Necessity: A Study in Ethics, Law, and Human Action* 140 (May 2011) (unpublished Ph.D. dissertation, University of Texas at Austin), <http://catalog.lib.utexas.edu/record=b7762103~S29>.

2012]

SYMPOSIUM ARTICLE

905

legislator, and of natural law in the larger context of divine law. It provides the assurance necessary to uphold absolute prohibitions even when it looks as though refusing to do wrong will result in catastrophe.²⁷ My obligation to respect such prohibition is, on the reading of Aquinas at issue for O'Brien, Anscombe, and Geach, an aspect of what I owe to God.

Far from it being merely ill-advised to fail to heed my obligations to God, deliberate failure to honor these obligations is *insane*.

If I understand him, this point informs Finnis's appreciation of the force of moral absolutes. Having said that much, however, it looks as though what is needed for this piece of Finnis's project is the very religion at issue in Finnis's lectures on moral absolutes and in the corpus of St. Thomas—sacred doctrine, not just a general account of practical reason.

27. Finnis is careful to point out that faith in divine providence on this matter is not a license for thoughtless action:

[One] who, in accordance with a moral absolute, excludes an option as wrong is not excused from doing everything morally possible to pursue the goods which could not have been sought by violating the moral absolute. Such a person's horizons are in no way narrowed. Indeed, the situation thus morally structured challenges the chooser to expand the horizons of possibility with creativity and zeal.

FINNIS, *supra* note 1, at 17. The fact that, if Kant and Aquinas and Christian tradition are right, I am not permitted to lie to the murderer at the door does not mean that I am not permitted to refuse to let him enter my house, or, should he rush past me intent on murder, to assist his intended victim in locking him in the basement and telephoning the police, or to try to distract him, or, or, or.

906

VILLANOVA LAW REVIEW

[Vol. 57: p. 893]